

1 NEELEMAN LAW GROUP
2 1403 8th Street
3 Marysville, WA 98270
4 Telephone 425-212-4800
5 Fax 425-212-4802

The Honorable Mary Jo Heston

4 **IN THE UNITED STATES BANKRUPTCY COURT**
5 **WESTERN DISTRICT OF WASHINGTON**

6 In re: : Case No.: 23-41110
7 SPEED TRANS, LLC, : **STIPULATION BETWEEN THE**
8 Debtor-in-Possession : **DEBTOR IN POSSESSION AND COLCO,**
9 : **LLC FOR THE REJECTION OF LEASE**
10 : **AGREEMENT AND TREATMENT OF**
11 : **CLAIMS**
12 :
13 :
14 :
15 :
16 :
17 :
18 :
19 :
20 :
21 :
22 :
23 :
24 :
25 :
1403 8th Street | Neeleman
Marysville, WA 98270 | Law
P 425.212.4800 || F 425.212.4802 | Group

13 Comes now the Debtor-In-Possession, Speed Trans, LLC, (the “Debtor”) and Colco,
14 LLC, a creditor in the above-referenced case (the “Landlord”) by and through their respective
15 counsel, hereby stipulate and agree as follows:

16 **BACKGROUND**

17 1. The Debtor filed a petition under Chapter 11, Subchapter V on July 11, 2023 (the
18 “Petition Date”). The Debtor is operating its business and managing its affairs as a debtor-in-
19 possession under 11 U.S.C. §§ 1107 and 1108.

20 2. As of the Petition Date, the Debtor operated its business out of a leasehold
21 premises located at 3701 Pacific Highway East, Fife, Washington 98424 (the “Property”)
22 pursuant to the terms of a lease agreement with an effective date of January 11, 2022 (herein
23 “Lease Agreement”, a copy of which is attached hereto as “Exhibit A”), entered into by and
24 between the Debtor and Landlord. The Debtor and Landlord are collectively referred to herein as
the “Parties.”

25 Stipulation Regarding Rejection of Lease

1 3. The Lease Agreement provided for a term of eighty-six months commencing May
2 1, 2022 and expiring on June 30, 2029. As provided in Article 4, the Lease Agreement is a triple
3 net (NNN) lease, whereby the Debtor owes the monthly rent amount plus property expenses,
4 including real estate taxes, insurance, and maintenance (collectively, “Rent”).

5 4. Under Article 5 of the Lease Agreement, the Debtor delivered to Landlord a
6 security deposit in the amount of \$41,195.00 (the “Security Deposit”).

7 5. The Landlord filed an amended proof of claim on September 27, 2023, asserting
8 that the following amounts were owed under the Lease Agreement:

- 9 a. Pre-petition amounts totaling \$55,737.85 (the “Pre-Petition Claim”), which
10 includes 2022 and 2023 NNN and late fees, and prorated July rent and NNN
11 for July 1-10, 2023.
- 12 b. Post-petition amounts entitled to administrative priority totaling not less than
13 \$70,907.50 plus attorneys’ fees (the “Administrative Claim”), which includes
14 prorated July rent and NNN for July 11-31, 2023, August rent and NNN, late
15 fees, and interest.

16 6. Counsel for the Landlord has incurred post-petition attorneys’ fees in the
17 approximate amount of \$30,000.00, which are recoverable under the Lease Agreement and that
18 the Landlord asserts are entitled to administrative expense priority.

19 7. In an effort to minimize continuing costs to the estate, including post-petition
20 administrative fees as well as reduce ongoing monthly expenses, the Debtor has decided to
21 relocate its business operations and reject the Lease Agreement with the Landlord.

STIPULATION

8. Based upon the foregoing, and subject to Court approval the Parties have agreed to the termination of the Lease Agreement pursuant to 11 U.S.C. § 365(a) as of November 1, 2023.

9. As of November 5, 2023, the Debtor has vacated the Property and completed a final walk-through with the Landlord.

10. The Debtor asserts an ownership interest in a paint booth that is currently located at the Property. The parties have agreed, subject to Court approval and notice to any parties who may assert an interest in the paint booth, that the Debtor will convey, pursuant to 11 U.S.C. § 363(f), all of its right, title and interest in the paint booth to Landlord, in exchange for a credit in the amount of \$14,542.85 to be applied against Landlord's Pre-Petition Claim of \$55,737.85.

11. The Parties agree to the following treatment of the Pre-Petition Claim and Administrative Claim filed by Landlord on September 27, 2023:

a. **Pre-Petition Claim amount of \$55,737.85.** The Pre-Petition amount will be offset by the Security Deposit in the amount of \$41,195.00. Further, the Parties agree that the credit of \$14,542.85, provided in exchange for the estate's interest in the paint booth, will be applied against the Pre-Petition Claim and fully satisfy the remaining amount of such claim.

b. Any outstanding balance for additional prepetition amounts due to the Landlord, including for any unpaid prepetition utilities owed to the City of Fife, will be paid to the Landlord as a general non-priority unsecured claim and will be paid as a Class 5 claim with treatment as set forth in Debtor's Amended Plan. Landlord will file an amended proof of claim within 30 days of the effective date of the Plan evidencing such additional amounts.

c. Administrative Claim in the amount of \$70,907.50. The Parties

acknowledge that the Debtor tendered a payment to the Landlord in the

1 amount of \$23,214.13, which reduced the balance of the Administrative Claim
2 to \$47,693.37, plus Landlord's attorneys' fees totaling \$30,000. The
3 Administrative Claim will be paid pursuant to the terms of the Debtor's
4 Amended Plan as follows:

- 5 i. Two (2) payments in the amount of \$15,000.00 each to be paid on or
6 before December 20, 2023 and January 20, 2024.
- 7 ii. The remaining balance of the Administrative Claim, in the amount of
8 \$47,693.37, shall as of the effective date of the Amended Plan accrue
9 interest at the rate of 5.36% per annum and will be paid in monthly
10 payments of \$4,700.00 per month. Payments will be made on the 1st of
11 each month beginning February 1, 2024, and continuing until paid.
- 12 iii. The remaining balance of the Administrative Claim as set forth above
13 may be adjusted by additional sums determined owed by the Debtor to
14 Landlord, including amounts owed by the Debtor for post-petition
15 utilities and additional accrued attorneys' fees. The Parties agree that
16 any proof of claim setting forth any additional claim for damages or
17 expenses or other administrative expenses incurred post-petition, shall
be filed within 30 days from the effective date of the Amended Plan.

18 12. The terms and provisions of this Stipulation will be incorporated into Debtor's
19 Amended Plan as an exhibit for the treatment of the claims of Landlord. Following the entry of
20 an order approving this Stipulation, and upon the filing of Debtor's Amended Plan incorporating
21 the terms of this Stipulation, Landlord agrees to vote in favor of Debtor's Amended Plan.

22 13. The Debtor's Amended Plan provides for the rejection of the sublease between
23 the Debtor and Joe & Son's Auto Body, LLC ("Subtenant") pursuant to 11 U.S.C. § 365 and
24 elimination of the Subtenant's interest in the Property. The Subtenant's interest in the Property
25 will be limited to the terms of a new lease agreement to be negotiated between Subtenant and
Stipulation Regarding Rejection of Lease

1403 8th Street | Neeleman
Marysville, WA 98270 | Law
P 425.212.4800 || F 425.212.4802 | Group

1 Landlord. The Debtor waives any right it has to collect rent from the Subtenant after November
2 1, 2023 and all future rent due by Subtenant shall be payable to Landlord in accordance with the
3 agreement to be reached between Landlord and Subtenant.

4 14. Landlord agrees to waive its unsecured rejection damages claim for future
5 amounts due under the Lease Agreement.

6 15. If this Bankruptcy Case is dismissed or converted to a case under Chapter 7 of the
7 Bankruptcy Code, or if the Debtor fails to confirm the Amended Plan incorporating the terms of
8 this Stipulation, the Landlord's compromise of its claims herein shall be null and void and
9 Landlord shall retain its rights to assert a claim to enforce the full amount of its Administrative
10 Claim, Pre-Petition Claim, and unsecured rejection damages claim against Speed Trans, LLC
11 pursuant to the terms of the Lease Agreement. The rights herein shall exist notwithstanding the
12 terms of the Article X of the Debtor's Amended Plan and shall control over any discharge
provisions in the Amended Plan and order confirming the Amended Plan.

13 16. Nothing contained herein is intended or shall be construed as: (i) an admission as
14 to the amount of, basis for, or validity of any claim against the estate under the Bankruptcy Code
15 or other applicable non bankruptcy law; (ii) a waiver of Debtor's or any other party in interest's
16 right to dispute any claim on any grounds; (iii) a promise or requirement to pay any claim; or (iv)
17 an implication or admission that any particular claim is of any particular type.

18 17. The Debtor shall be responsible for filing and prosecuting a motion seeking
19 approval of this Stipulation. Landlord agrees that any such motion may be heard on shortened
20 time.

1 Dated this day of 28th November, 2023

2
3 NEELEMAN LAW GROUP, P.C.

4
5 /s/ Jennifer L. Neeleman
6 Jennifer L. Neeleman, WSBA #37374
7 *Attorney for Speed Trans, LLC*

8
9 Dated this 28th day of November, 2023

10
11 K&L Gates, LLP

12 /s/ Brian T. Peterson
13 Brian T. Peterson, WSBA #42088
14 *Attorney for Colco, LLC*

15
16
17
18
19
20
21
22
23
24
25 Stipulation Regarding Rejection of Lease

1403 8th Street | Neeleman
Marysville, WA 98270 | Law
P 425.212.4800 || F 425.212.4802 | Group